

Atty. Docket No.: AFIP03-58 02
Amdt. Dated June 12, 2008
Reply to Office action of April 11, 2008
Appl. No.: 10/827,282

PATENT

REMARKS

Allowable Subject Matter

Claims 28 has been objected to as being dependent upon a rejected base claim but otherwise indicated as allowable. Applicant reserves the right to rewrite the claim to include all of the limitations of the rejected base claim and any intervening claims in the event those claims are not allowed.

Claim Rejections

Claims 1-27 have been rejected under 35 U.S.C. § 103 as allegedly being unpatentable in view of the cited art. Specifically, claims 1-9, 11, and 16-18 (Office Action ¶¶ 6-11) and claims 19-21 and 23-27 (Office Action ¶¶ 18-23) have been rejected over Anne (US 2002/0160439 A1) in view of Paul ("Effects of Oxidiizing Adulterants. . .") JAT, Vol. 26, October 2002)(hereinafter "Paul Article"). Claim 10 has been rejected in view of the primary combination in further view of Kightlinger (US 4,558,100)(Office Action ¶¶ 12-13); claims 12-15 rejected in view of the primary combination in further view of Banerjee ("Urinary Hydrogen Peroxide . . . ")(Office Acton ¶¶ 14-17); and claim 22 also rejected in view of the primary combination in further view of Banerjee (Office Action ¶¶ 24-25). Applicant respectfully submits that the Declaration of Buddha D. Paul submitted concurrently herewith removes the Paul Article as a reference thereby mooting the present rejections.

Specifically, Applicant submits that the Paul Article has an effective date of October 2002 and the present application claims priority back to US Provisional Application No. 60/479,187 filed on June 18, 2003. Accordingly, the effective filing date of the present application is less than one year after the publication date of the Paul Article. Therefore, the Paul Article is not a statutory bar and may be properly be

overcome in a rejection by the submission of a Declaration under 37 CFR 1.131 or 1.132.

Concurrently with this response, Applicant submits the Declaration of Buddha D. Paul under 37 CFR 1.132. In his Declaration, Dr. Paul confirms that he was the sole inventor or the subject-matter described and discussed in the Paul Article. Dr. Paul confirms that Mr. Aaron Jacobs, the named co-author, was merely an assistant that aided Dr. Paul in preparing the article describing his work for publication. Therefore, pursuant to MPEP section 715.01(c), Applicant submits that “[u]nless it is a statutory bar, a rejection based on a publication may be overcome by a showing that it was published with by applicant himself/herself or on his/her behalf.” Further, “[w]here the applicant as one of the co-authors of a publication cited against his or her application, her or she may overcome the rejection by filing . . . a specific affidavit or declaration under 37 CFR 1.132 establishing that the article is describing applicant’s own work.” Finally, Applicant submits that “[a]n affidavit or declaration by the applicant alone indicating that the applicant is the sole invention and that the others were merely working under his or her direction is sufficient to remove the publication as a reference under 35 U.S.C. 102(a).” Therefore, in view of Dr. Paul’s Declaration, Applicant submits that the Paul Article has been overcome as a reference in making the rejections of record.

In order to make out a prima facie case of obviousness, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 180 USPQ 580 (CCPA 1970). In view of the removal of the Paul Article as a reference, the remaining references of record do not teach or suggest the claimed invention. Accordingly, Applicant respectfully submits that the claims are allowable over the art of record. In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejections of the claims.

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CONCLUSION

In view of the above Remarks, Applicant respectfully submits that the present application is in condition for allowance and early notification of the same is earnestly requested. Should the Examiner have any questions or otherwise deem that prosecution of the present application may be advanced, the Examiner is invited to contact Applicant's representative at the number below.

Respectfully submitted,
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